

## SUBPART N: PUBLIC INVOLVEMENT AND TECHNICAL ASSISTANCE GRANTS

### 40.1400: Public Involvement - General Approach for Response Actions

- (1) 310 CMR 40.1400 through 40.1449, cited collectively as 310 CMR 40.1400, contain requirements and procedures for the conduct of Public Involvement Activities in connection with response actions.

### 40.1450: Technical Assistance Grants

- (1) 310 CMR 40.1450 through 40.1499, cited collectively as 310 CMR 40.1450, specifies terms and conditions of eligibility for, and use of, technical assistance grants.

### 40.1451: Purpose and Scope of Technical Assistance Grants

- (1) The Department may provide for limited grants in order to:
  - (a) provide access to expert advice and technical assistance;
  - (b) encourage more effective participation in the response action process by promoting access to and use of information; and
  - (c) allow issues of concern related to the disposal site to be addressed.

### 40.1452: Grant Availability

- (1) Grants shall be made available to affected persons described in 310 CMR 40.1453, subject to the provisions of 310 CMR 40.1451 through 40.1462 and to the availability of funding.
- (2) For each disposal site, there shall be no more than one grant available per funding round.
- (3) Grants may be made to single organizations for technical assistance activities at more than one disposal site. However, no applicant shall receive more than one grant in a funding round.
- (4) Grant Amounts
  - (a) At the start of each funding round, the Department shall designate a maximum amount for any single grant.
  - (b) Any other source of funding obtained by an applicant for expert advice or technical assistance shall not be subtracted from any specified grant maximum designated by the Department provided the total of grant funds received by the grantee from all sources shall not exceed 100% of the total cost of the proposed project.

(c) The maximum grant amount(s) shall be set forth in the notice to be published by the Department pursuant to 310 CMR 40.1455.

- (5) Disposal sites that are eligible for Technical Assistance Grants are:
- (a) any disposal site classified as Tier IA, Tier IB, Tier IC or Tier II pursuant to 310 CMR 40.0500,
  - (b) any Massachusetts disposal site listed on the National Priority List, and
  - (c) any site deemed by the Department to be Adequately Regulated pursuant to 310 CMR 40.0110 *et. seq.*, and for which response actions have not been completed.
- (6) No Technical Assistance Grant Agreement shall be made available to a Grantee for any site for which:
- (a) a valid Class A or B Response Action Outcome Statement has been submitted to the Department by the party(ies) conducting response actions at a Tier IA, Tier IB, Tier IC, Tier II site; or
  - (b) a Waiver Completion Statement has been submitted to the Department by the party(ies) conducting response actions.

#### 40.1453: Eligible Applicants

- (1) The Department may provide for limited grants to be given to the following affected persons:
- (a) any group of individuals who may be affected by oil and/or hazardous material from any eligible disposal site, or
  - (b) any city, town or agency thereof which may be affected by oil and/or hazardous material from any eligible disposal site, or
  - (c) any district or other body politic that owns or operates a public water supply system which may be affected by oil and/or hazardous material from any eligible disposal site.
- (2) Applicants who do not exist as a legal entity with legal authority to receive, disburse, and be responsible for funds at the time the grant is awarded shall be ineligible.
- (3) Any applicant which unreasonably restricts the meaningful participation and involvement of affected individuals shall be ineligible to receive a grant.
- (4) Any person liable or potentially liable pursuant to M.G.L. c. 21E, § 5 and any Other Person taking a response action at a disposal site pursuant to M.G.L. c. 21E, § 4 shall be ineligible to receive a grant for that disposal site.

#### 40.1454: Eligible Activities

- (1) Eligible activities for grants may include, but are not limited to:
- (a) interpretation, review or critique of technical analyses related to a disposal site as presented in reports developed by or on behalf of the

Department, RPs, PRPs, Other Persons, or by other public or private entities. Such reports may include, but are not limited to:

1. the scope of work for Phase II; the Phase II Report; the Phase III - Remedial Action Plan; the Phase IV - Remedy Implementation Plan, As-Built Construction Report, and the Final Inspection Report; the Phase V - Inspection and Monitoring Report; and
  2. sampling and analysis plans;
- (b) observation of assessment, sampling or response action activities conducted by the Department, RP, PRP or Other Person. Such observation shall be conducted in accordance with 310 CMR 40.1454(3);
- (c) analysis of split samples taken by the Department, RP, PRP or Other Person, provided that the grantee's consultant performs testing and analysis which is identical to that performed by the Department, RP, PRP or Other Person;
- (d) health surveys to gather existing information through interviews with, and questionnaires answered by, individuals who may be affected by the disposal site;
- (e) legal advice concerning the public's involvement in response actions;
- (f) public education activities; and
- (g) a reasonable share of funding for voluntary mediation concerning response actions for the disposal site.

(2) The following activities shall be ineligible for grants:

- (a) development of new environmental data;
- (b) development of new medical data;
- (c) organizational development or membership building, except such activities that are incidental to performance of eligible activities;
- (d) litigation or any other adversarial legal proceeding;
- (e) partisan political activity or any activity to further the election or defeat of any candidate for public office; and
- (f) taking or arranging for any response actions at the disposal site.

(3) The following conditions shall be met before initiating eligible activities:

- (a) grantees shall obtain approval from the person(s) responsible for the conduct of the response action at the disposal site and from the owner or operator of the disposal site prior to conducting activities at the disposal site under 310 CMR 40.1454(1)(b) and (c);
- (b) grantees shall comply with the health and safety plan and all operational protocols established for the disposal site; and
- (c) grantees shall not interfere with the efficient, expeditious, and safe conduct of response actions at the disposal site.

40.1455: Notice Provisions

- (1) For each funding round, the Department shall publish a notice in the Environmental Monitor and on the Department's web site announcing the availability of grants, application procedures and deadlines. The availability

of grants shall also be announced by the Department with any List of Disposal Sites published pursuant to 310 CMR 40.0168.

(2) Information about the availability of technical assistance grants shall also be published by the person(s) responsible for the conduct of the response action at the disposal site as part of other public notices published pursuant to this Contingency Plan.

#### 40.1456: Grant Application Process

Grant applications shall be received and evaluated by the Department in accordance with the following procedures:

(1) The Department may establish one or more funding rounds and application periods each year. The Department may extend any application period at its discretion. Should an application period be extended, the Department shall publish notice thereof in the Environmental Monitor and on the Department's web site.

(2) Applications received after the close of the application period shall not be considered for a grant in that funding round.

(3) Grant applications shall be submitted on a Technical Assistant Grant Application Form provided by the Department, together with any other documentation required by the Department.

(4) Any applicant applying for a grant shall submit a Technical Assistance Grant Application Form which shall include the following types of information:

- (a) a detailed description of the applicant's proposed project and a schedule for completing the project;
- (b) a description of the applicant's efforts to identify and include affected individuals, including the applicant's efforts to publicize its interest in applying for the grant and in soliciting interest by others in joining its efforts;
- (c) a description of the impacts of the disposal site on health, safety, public welfare, and the environment;
- (d) a description of the applicant's history and experience, if any, in conducting activities similar to those proposed in the application;
- (e) a copy of the applicant's by-laws, if any;
- (f) documentation that the applicant will meet the requirements set forth in 310 CMR 40.1453;
- (g) information and documentation describing the background and qualifications of the types of consultants to be employed by the applicant;
- (h) a description of the applicant's procedures for supervision and accountability of experts and for management of grant-funded activities;
- (i) a description of the applicant's procedures for financial management and accounting of grant funds;
- (j) an explanation and schedule indicating how the requirements of 310 CMR 40.1453(2) shall be met if a grant is awarded to the applicant;

- (k) a description of how the grantee will measure the project's success in meeting its goals and objectives, including a list of specific performance standards that will be used in that evaluation process; and
- (l) if the applicant has ever received a technical assistance grant or grants pursuant to this Contingency Plan, a description of the relationship between any incomplete or unfinished project or projects for which said grant funds were received and the project for which the applicant is currently applying for a grant.

(5) Within each funding round, the Department shall designate a date by which all Applications shall be submitted to the Department.

#### 40.1457: Grant Selection Process

(1) Grant Applications shall be evaluated based upon the criteria set forth in the application package which shall consider without limitation: the proposal's potential to address a balance between technical education, and community outreach and participation; and the relative impact of the disposal site location on health, safety, public welfare and the environment (including consideration of whether the disposal site location is within an Economic Target Area or area designated as an Environmental Justice Community).

(2) In each funding round, the Department shall rank the applications according to a weighted value assigned for the criteria set forth in the application package. This ranking shall be used by the Department to establish a grant funding priority list that shall indicate which grants are likely to be funded during that funding round. The Department may determine the number of grants on the grant funding priority list based on the following considerations:

- (a) the Department's administrative capacity to manage the technical assistant grant program at the time the grant funding priority list is established; and
- (b) the total amount of funding available for the grant program in a given round.

(3) Upon final determination of the Department's grant funding priority list, the Department shall publish the list in the Environmental Monitor and on the Department's web site.

(4) Following publication of the Department's funding priority list, a copy of the applicant's evaluation sheet will be made available upon written request.

(5) Any applicant on the grant funding priority list may be bypassed for an award if the Department determines that the applicant is for any reason unable to accept or receive the grant during that funding cycle. Any application that is bypassed shall not retain its priority rating for future funding rounds. The next highest ranked application which was otherwise not likely to be funded shall be added to the grant funding priority list for each bypassed application. Each grant funding priority list shall be in effect only during the funding round in which it was established.

(6) Once the grant is awarded, the applicant shall be referred to as the grantee. A grant shall be deemed awarded when a Grant Agreement is entered into by the Department and the grantee, and the Grant Agreement has been accepted by the Office of the Comptroller. The Grant Agreement shall consist of the grant offer as executed by the Department and the grant acceptance as executed by the grantee as well as any and all terms and conditions under which the grant is being awarded to the grantee.

40.1458: Payment Method

(1) Payment of a grant award to a grantee shall be made as reimbursement for costs incurred by the grantee and shall be subject to 310 CMR 40.1450 through 40.1462. The terms and conditions of payment, and all required supporting documentation to be submitted by the grantee prior to payment shall be set forth in the Grant Agreement.

40.1459: Fiscal Management of Grants

(1) The grantee is responsible for complying with 310 CMR 40.1451 through 40.1462 and the terms and conditions contained in the Grant Agreement. This responsibility shall not be delegated, transferred, or assigned by the grantee.

(2) The grantee shall establish for its project a separate account in a bank with insurance coverage by the Federal Deposit Insurance Corporation (FDIC). Project funds and all interest earned on such funds shall be credited to said account and all project payments shall be made from said account.

(3) The grantee shall maintain a financial management system which shall provide for effective control over and accountability for all project funds. Grantees shall safeguard all such funds and ensure that they are used solely as authorized by the Grant Agreement.

40.1460: Records to be Maintained by Grantees

(1) The grantee shall maintain books, records, documents, and supporting evidence which shall fully explain the source, amount, and disposition of all grant funds.

(2) The grantee shall require its contractors, including contractors for professional services, to maintain accurate books, documents, papers, and records which are pertinent to the project.

(3) The grantee and contractors of the grantee shall retain all records for a period of at least three years from the date of the final grant payment, and longer if required pursuant to 310 CMR 40.1460(5).

(4) The grantee and its contractors shall make records available to the Department at all reasonable times for inspection, copying, and auditing.

(5) The grantee and its contractors shall retain all records relating to disputes until all appeals, litigation, claims, or exceptions arising out of the grantee's project have been fully resolved.

40.1461: Inspection of Projects

(1) The Department may, at a reasonable time and upon reasonable notice, conduct an inspection at any location where a grantee's project is being carried out.

40.1462: Honest Practices

(1) The award and administration of grants shall be accomplished free from bribery, graft, kickbacks and other corrupt or illegal practices. The grantee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. State administrative or other legally available remedies shall be pursued to the extent appropriate.

(2) The grantee shall take appropriate actions with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee shall advise the Department immediately when such allegations or evidence comes to the grantee's attention, and shall periodically report to the Department the status and ultimate disposition of any such matter.

(3) The grantee shall notify the Department of any material changes to the information provided in the Technical Assistance Grant Application, established in 310 CMR 40.1456(4) and 40.1456(6), at any point after the grant is awarded.

(4) The Department may suspend or terminate grant payments or may revoke a grant at any time if the Department becomes aware of any allegations, evidence or appearance of illegality, corruption, or fraud associated with the award of the grant, compliance or noncompliance with 310 CMR 40.1451 through 40.1462 or the Grant Agreement between the Department and the grantee, or expenditure of funds for the project. In the event that a grant is revoked, the grantee shall be responsible for returning to the Commonwealth all grant funds.

(5) The Department may make a factual determination at any time that a project is not being carried out in accordance with this Contingency Plan, M.G.L. c. 21E, or any other law or regulation. If the Department makes such a determination, then the Department shall notify the grantee of the

withdrawal of all grant funds, and may demand the return of the entire amount of the grant, or at the election of the Department, the unused portion of the grant funds, which shall be due immediately, or within five days of receipt of the notice by the grantee. Failure of the grantee to comply with this section shall subject the grantee to all civil, criminal and administrative remedies of the Commonwealth, including interest in the amount of 12% annum which shall accrue beginning on the fifth day after notice was received by the grantee.

(6) If the Department makes a determination that any of the grant funds are not used in accordance with the terms of the grant or any of the provisions of this Contingency Plan, M.G.L. c. 21E, or any other law or regulation, then the grantee shall be held liable to the Commonwealth for the return of the entire amount of the grant, including interest at a rate of 12% per annum from the date of such determination.

(7) If the Department has made a determination pursuant to 310 CMR 40.1462(4), and the grantee has not returned the amount of the grant upon demand plus any accrued interest, then at the Department's election, the demanded amount shall be deducted, plus any accrued interest, from the local aid appropriation to be made to any grantee that is a city, town, agency, or any district or other body politic that owns or operates a public water supply system pursuant to M.G.L. c. 58, § 20.

(8) The grantee shall include the following provisions in all contracts with its contractors which are funded, in full or in part, by a grant award:

(a) The contractor shall not accept compensation, financial or otherwise, for his or her services pertaining to the disposal site from any person having significant conflicting or adverse interests to those of the grantee unless the circumstances are fully disclosed to, and agreed to, by the grantee and all other persons engaging the contractor with regard to the disposal site; and

(b) In the event that the contractor has, develops or acquires any business association, direct or indirect financial interest, or other circumstances which is substantial enough to create an impression of influencing his or her judgment in connection with his or her performance of services provided to the grantee, the contractor shall fully disclose in writing to the grantee the nature of the business association, financial interest or circumstance. If the grantee objects to such business association, financial interest or circumstance, the contractor shall offer to terminate, at his or her discretion, either the business association, financial interest or circumstance, or his or her engagement with regard to the grantee.